

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION**

KENDALL RAY GRAY

v.

UNITED STATES OF AMERICA

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§

CIVIL ACTION NO. 5:22-CV-00033-RWS

**ORDER**

Before the Court is the Report and Recommendation of the United States Magistrate Judge (Docket No. 2), which contains her findings, conclusions and recommendations for the disposition of this matter. The Movant Kendall Ray Gray, a prisoner at FCI Forrest City Medium, proceeding *pro se*, filed the above-captioned civil action to move to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255. Docket No. 1. The case was referred to the United States Magistrate Judge in accordance with 28 U.S.C. § 636 and the applicable orders of this Court. The Court hereby adopts the Report and Recommendation of the Magistrate Judge as the findings and conclusions of this Court.

After reviewing the pleadings and the record, the Magistrate Judge issued a Report recommending the motion (Docket No. 1) be denied as time barred and the cause of action be dismissed with prejudice. Docket No. 2. A copy of the Report and Recommendation was mailed to the Movant. The Movant acknowledged receipt of the Report and Recommendation on May 17, 2022. To date, no objections have been filed.

The Movant is, therefore, barred from *de novo* review by the District Court of the Magistrate Judge's findings, conclusions and recommendations; and, except upon grounds of plain error, the Movant is barred from appellate review of the unobjected-to factual findings and legal

conclusions accepted and adopted by the District Court. *Duarte v. City of Lewisville, Texas*, 858 F.3d 348, 352 (5th Cir. 2017).

The Court has reviewed the pleadings in this cause of action and the Report of the Magistrate Judge. Upon such review, the Court concludes that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989) (where no objections to a Magistrate Judge's report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law"), *cert. denied*, 492 U.S. 918 (1989).

The Court also concludes that the Movant is not entitled to a certificate of appealability. An appeal from a judgment denying post-conviction collateral relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253. The standard for a certificate of appealability requires the movant to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483–84 (2000); *see also Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004). To make a substantial showing, the movant need not establish that he would prevail on the merits. Rather, he must demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner or that the questions presented are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483–84. Any doubt regarding whether to grant a certificate of appealability should be resolved in favor of the movant, and the severity of the penalty may be considered in making this determination. *See Miller v. Johnson*, 200 F.3d 274, 280–81 (5th Cir.), *cert. denied*, 531 U.S. 849 (2000).

In this case, the Movant has not shown that any of the issues would be subject to debate among jurists of reason, and the questions presented are not worthy of encouragement to proceed

further. The Movant has, therefore, failed to make a sufficient showing to merit the issuance of certificate of appealability, and a certificate of appealability will not be issued. Accordingly, it is

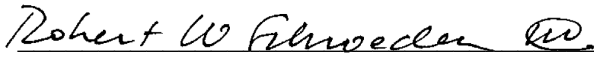
**ORDERED** that the Report of the Magistrate Judge (Docket No. 2) is **ADOPTED** as the opinion of the District Court. It is further

**ORDERED** that the Motion to Vacate, Set Aside or Correct the Movant's Sentence (Docket No. 1) is **DENIED**. It is further

**ORDERED** that the above-titled cause of action is **DISMISSED WITH PREJUDICE**. It is further

**ORDERED** that any motions currently pending in this civil action are hereby **DENIED-AS-MOOT**.

**So ORDERED and SIGNED this 15th day of June, 2022.**

  
ROBERT W. SCHROEDER III  
UNITED STATES DISTRICT JUDGE